

ORIGINAL

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Implementation of Section 309(j)
of the Communications Act -
Competitive Bidding
Narrowband PCS

Amendment of the Commission's
Rules to Establish New Narrowband
Personal Communications Services

PP Docket No. 93-253

GEN Docket No. 90-314

ET Docket No. 92-100

DOCKET FILE COPY ORIGINAL

To: The Commission

FURTHER COMMENTS OF AIRTOUCH PAGING

AirTouch Paging, by its attorney, hereby responds to the Public Notice dated December 21, 1994, seeking additional comments on the Commission's Narrowband PCS Entrepreneurs' Block Proposals.^{1/} The following is respectfully shown:

^{1/} Public Notice, Additional Comment Sought on the Commission's Narrowband PCS Entrepreneur's Block Proposals, dated December 21, 1994, DA 94-1560 ("Further Public Notice"). The Further Public Notice seeks additional comment on the proposals set forth in the Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 94-219, released August 17, 1994 ("3rd MO&O/Further NPRM").

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List A B C D E

1. AirTouch Paging owns and operates paging facilities throughout substantial portions of the United States. AirTouch Paging has been a long time proponent of narrowband PCS, and has taken a very active role at every stage of the docketed proceedings that have been conducted to fashion licensing and auction rules for narrowband PCS. AirTouch Paging has also participated successfully in both narrowband PCS auctions conducted to date by the Commission. AirTouch now is authorized to construct and operate on a single asymmetrically paired (50 kHz-12.5 kHz) nationwide PCS channel^{2/}, and was the high bidder for three asymmetrically paired regional narrowband PCS channels.^{3/}

2. In the 3rd MO&O/Further NPRM, the Commission proposed to set aside four of seven available MTA licenses and all BTA licenses into an "entrepreneurs' block".^{4/} Those eligible to bid for the set aside channels under the proposal were to include only designated entities ("DEs") and any applicant with annual gross revenues of less than \$125 million and total assets of less than \$500 million.^{5/}

^{2/} See Call Sign KNKV206, FCC File No. 28051-CN-P/L-94.

^{3/} See FCC File Nos. 00016-CN-L-95, 00034-CN-L-95, and 00040-CN-L-95. AirTouch Paging has submitted its long form applications for its regional licenses and has also made the requisite down payment. AirTouch Paging expects the Commission to grant its regional licenses in due course.

^{4/} Further Notice at ¶¶73-78.

^{5/} Id. at ¶78.

Designated entities were to be accorded a bidding credit of 25% and installment payments with only interest due for a number of years.^{6/} Finally, the Commission sought comment on whether some of the 12.5 kHz response channels should be set aside for designated entities.^{7/} The Further Public Notice seeks additional comment on the entrepreneurs' block proposals for narrowband PCS that are at issue in the 3rd MO&O/Further NPRM in light of (1) the results of the recent regional narrowband PCS auction, (2) the Commission's reconsideration of its broadband PCS entrepreneur's block rules, and (3) the September 22, 1994 U.S./Canada Interim Sharing Arrangement for narrowband PCS frequencies.

3. The Commission's proposal to change the licensing rules for narrowband PCS was based in large part on the fact that no designated entities ended up winning nationwide licenses.^{8/} As AirTouch Paging and others

^{6/} Id. Depending on the type of designated entity, the Commission has proposed varying bidding credits, including differences in the number of years that the installment payments are principal free, and whether tax certificates are available. In the regional auction, the Commission increased the bidding credit to 40% for designated entities. 3rd MO&O/Further NPRM at ¶58. The Commission's proposal would reduce the bidding credit back to 25% for some bidders, and reduce it even further for others, but set channels aside for designated entities.

^{7/} Id. at ¶122.

^{8/} The 3rd MO&O/Further NPRM highlights the fact that there was significant DE participation in the nationwide auction, but no winning DE applicant. 3rd MO&O/Further NPRM, para 73. The Commission, however,
(continued...)

correctly pointed out in their earlier comments, the nationwide auction was not indicative of the results to be expected in the regional auctions.^{9/} In the regional auction, four designated entities won a total of eleven licenses out of the thirty being auctioned.^{10/} Indeed, designated entities won over 33% of all the licenses awarded at the regional narrowband auction.^{11/} Any Commission concern that designated entities would not be in a position to participate meaningfully in narrowband PCS has now been largely resolved.^{12/}

4. Given this positive development, the Commission should avoid the radical reallocation of channels through entrepreneurs' set asides proposed in the 3rd MO&O/Further NPRM. The available record does not support

^{8/} (...continued)

did make some changes for the regional auction -- most notably the increase of the bidding credit from 25% to 40%. See 3rd MO&O/Further NPRM at para 58.

^{9/} See e.g. Comments of AirTouch Paging at ¶¶6-8.

^{10/} These designated entities were Benbow P.C.S. Ventures, Insta-Check Systems, PCS Development Corporation, and Page Call, Inc. (formerly Lisa-Gaye Shearing). See Report No. CN-95-1, dated December 9, 1994.

^{11/} One of the winners, Insta-Check, in fact did not even use the bidding credit.

^{12/} It is not clear whether the increase in designated entities as winners can be attributed to the increase in the bidding credit to 40% or whether the size of the licenses being awarded played some role. AirTouch suspects both of these factors played a role. One designated entity won a common channel in each of the five regions (ie. a nationwide license), while the rest won from one to three regional licenses.

granting additional preferences to designated entities because the public interest concerns the Commission had at the time of the 3rd MO&O/Further NPRM have now been satisfied. The existing Commission Rules already grant designated entities bidding credits of 40%^{13/} on over 40% of the remaining narrowband PCS licenses and installment payment options on all of the remaining channels.^{14/} As was demonstrated in the regional narrowband PCS auction, this combination of preferences is sufficient to allow designated entities to garner spectrum.^{15/}

5. In fact, the Commission may reasonably expect this trend of designated entities winning licenses to accelerate even without rule changes for several reasons. First, the well-publicized success of designated entity

^{13/} AirTouch supports the continuation of the 40% bidding credit for designated entities in the MTAs and BTAs as a way of ensuring continued participation by designated entities in narrowband PCS.

^{14/} One of the issues the Commission raised in the 3rd MO&O/Further NPRM was whether any of the remaining licenses should be redesignated as a nationwide license. See 3rd MO&O/Further NPRM at para 122. Since one designated entity now holds a nationwide license (through the aggregation of regional licenses), redesignating MTA or BTA channels to a nationwide basis is unnecessary.

^{15/} AirTouch Paging is also concerned that the 3rd MO&O/Further NPRM may micromanage the preferences too much. Although the goals are laudatory, AirTouch Paging suspects that the range and type of credits set forth in the 3rd MO&O/Further NPRM could have lead to different winners at the regional auctions. AirTouch Paging suggests that the current structure would defer all of these choices to the market, instead of the Commission, and thus better serve the public interest.

applicants in the regional auctions can be expected to encourage new designated entity applicants to be formed and to participate in future auctions, thereby increasing the likelihood of there being additional designated entity winners. Second, as the geographic size of each license area decreases, the auction price also will decrease, thereby creating opportunities for designated entities with smaller pools of available capital.^{16/} Notably, in the Interactive Video Data Systems ("IVDS") auction, well over 50% of the licenses were awarded to designated entities without any set asides or preferences beyond those already accorded narrowband PCS applicants.^{17/} Due to certain similarities between the IVDS licensing opportunity and the remaining narrowband opportunities^{18/}, Airtouch believes the active participation of DE's that took place in IVDS will occur as well in the upcoming narrowband auctions without

^{16/} This factor, AirTouch Paging believes, played a seminal role in the designated entities wins at the regional narrowband PCS auctions. It also serves to reiterate AirTouch Paging's earlier stated view that BTA licenses should not be reconfigured to MTA areas. Smaller license areas mean increased opportunities to participate at lower costs, which will favor continued DE participation.

^{17/} Indeed, in the IVDS auction, which was based on MTAs, the bidding credit was 25%, not 40%.

^{18/} The IVDS channels were licensed on an MTA basis and the total amount of spectrum auctioned was somewhat comparable to that available in the narrowband PCS channels. On that basis, that IVDS auction should provide insight into the likely outcome of the MTA and BTA narrowband PCS auctions.

additional preferences or set asides being established. Finally, as was shown by the success of Insta-Check Systems in the regional auctions, designated and small businesses are able to garner licenses with only the installment payment preference.^{19/} This further demonstrates that the existing preferences are meaningful and do not need to be altered to be effective.

6. Some may advocate the creation of entrepreneurs' blocks for narrowband in the hope that set asides will result in lower prices to DE participants.^{20/} However, the intent of the designation entity provisions in the Omnibus Budget Reconciliation Act was to ensure DE participation in the provision of PCS services, not to guarantee below market prices. In any event, it is not clear that creating set asides will materially assist designated entities in garnering licenses at lower prices. The idea that channels are "reserved" for entrepreneurs' could actually generate interest by speculators who might end up causing licenses to be bid up to artificial levels.^{21/} And, in the regional narrowband PCS auction,

^{19/} Insta-Check did use its bidding credit at times, but ultimately only used the installment payment preference.

^{20/} The hope may spring from an expectation that set aside licenses would not be bid-up by well-healed non-DEs.

^{21/} There appears to have been elements of speculation in the IVDS auctions which skewed some of the purchase prices.

certain designated entities demonstrated that they were willing to "spend" some, if not all, of their credit to garner a license when faced with competition from other well-funded bidders.^{22/} Given these considerations, there is no reason to conclude that set asides will prove more beneficial to DE applicants in the long run.^{23/}

7. AirTouch Paging does believe that modifying the narrowband designated entity rules in some respects to conform them to the wideband rules may serve to increase the number of DE winners. Several modifications in the Fifth Memorandum Opinion and Order in PP Docket No. 253^{24/} served to facilitate the ability of DEs to attract outside investment capital (e.g., relaxing control group equity requirements, attribution rules and affiliation rules).

^{22/} For example, PCSD bid \$151,544,001 for a symmetrically paired nationwide channel while PageMart bid \$92,599,020 for an equivalent channel. Thus, PCSD spent 38% of its credit to secure the license. Although it spent most of its credit, PCSD, nonetheless, was assured a license by such behavior and also continued to enjoy the installment payment option as a small business.

^{23/} This is exactly what happened at the nationwide auction. None of the designated entities was willing (or able) to bid the amounts that eventually won those licenses. If there had been a set aside, the set aside licenses might have gone for less money even though there were other bidders out there who more highly valued the spectrum and would have been willing to pay more for it.

^{24/} FCC 94-285 adopted Nov. 10, 1994.

Changes of this nature would assist DEs in narrowband more than the proposed restructuring to create set asides.^{25/}

8. The core concept of auctions is that freely competitive bidding results in efficient frequency allocations. The creation of government-imposed restrictions on eligibility by definition interferes with the efficiency of this free market process. While such interference may be justified to achieve an important public interest objective (i.e. the participation of DEs in the provision of PCS service), events indicate that set asides are not necessary in narrowband PCS to achieve this result. AirTouch Paging believes that the 40% bidding credit and the installment payment option will prove to be sufficient preferences to continue to ensure additional designated entity participation. This combination of preferences was very successful in the regional auctions and the Commission should expect the results to be even better at the MTA and BTA level. Therefore, AirTouch Paging respectfully requests that the Commission decline to adopt its proposed Rules, or,

^{25/} However, the Commission should not expand the definition of DEs eligible for preferences in narrowband by raising the threshold to \$125 million. So high a threshold would help many who do not fit into the target categories of historically disadvantaged groups.

in the alternative, revise the proposal to reflect AirTouch
Paging's original comments.

Respectfully submitted,

AirTouch Paging

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January 13, 1995

CERTIFICATE OF SERVICE

I, Carolyn M. Floyd, hereby certify that I have this 13th day of January, 1995, caused copies of the foregoing **Further Comments of AirTouch Paging** to be delivered by hand, courier charges prepaid, or by first class U.S. mail, postage prepaid, to the following:

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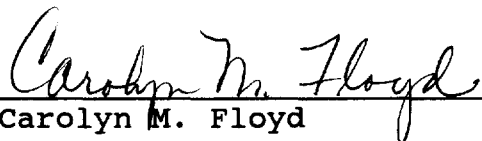
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